

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

U.S. DISTRICT COURT
BRUNSWICK, GA

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C. Chell

Case No. **CV209- 002**

GLYNN ENVIRONMENTAL COALITION)
)
Plaintiffs,)
)
v.)
)
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY)
)
Defendants.)
_____)

CERTIFICATE OF INTERESTED PARTIES

S.D. Ga. LR 3.2

The undersigned, counsel of record for Glynn Environmental Coalition (GEC), certifies that the following is a full and complete list of the parties in this action:

<i>Name</i>	<i>Identification & Relationship</i>
Glynn Environmental Coalition	Plaintiff
United States Environmental Environmental Protection Agency (EPA)	Defendant

The undersigned further certifies that the following is a full and complete list of officers, directors, or trustees of the above-identified parties:

<i>Name</i>	<i>Identification & Relationship</i>
Daniel Parshley	Project Manager, GEC
Bill Owens	President, GEC
Frank Lea	Vice-President, GEC
Barbara Bowdry	Secretary, GEC

Ann Marie Wilson	Treasurer, GEC
Luanne Lea	TAG Treasurer, GEC
Charles DesEnfants	At-Large, GEC
Paul Redding	At-Large, GEC
J. J. Johnson	At-Large, GEC
Vince Jaubert, Jr.- Davis	At-Large, GEC
Sam Frazier	At-Large, GEC
Robert Randall	Org. Development, GEC
Stephen L. Johnson	Administrator, EPA
J.I. Palmer, Jr.	Regional Administrator, EPA Region 4

The undersigned further certifies that the following is a full and complete list of other persons, firms, partnerships, corporations, or organizations that have a financial interest in, or another interest which could be substantially affected by, the outcome of this case (including a relationship as a parent or holding company or similar relationship):

Name	Identification, Relationship & Interests
Stack & Associates, P.C.	Attorneys for Plaintiffs

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COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

I. Introduction

1. Plaintiff Glynn Environmental Coalition ("GEC") brings this action to redress violations of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, by Defendant United States Environmental Protection Agency ("EPA" or "Agency") in failing to provide all responsive records (and all non-exempt portions thereof) requested by Plaintiff to EPA seeking agency records and files pertaining to the Agency's involvement with Superfund Sites in Glynn County, Georgia.
2. This action seeks declaratory relief finding EPA in violation of FOIA for failing to provide all responsive records (and all non-exempt portions thereof) requested by GEC and injunctive relief requiring that EPA immediately and fully comply with GEC's FOIA request.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision).

4. Venue in this Court is proper, as Plaintiff GEC has its office and principle place of business in Brunswick, Georgia. See 5 U.S.C. § 522(a)(4)(B); 28 U.S.C. 1391(e).

III. PARTIES

5. Plaintiff Glynn Environmental Coalition ("GEC") is a community nonprofit organization, organized under § 501(c)(3) of the Internal Revenue Code and the laws of the State of Georgia with over 300 members. GEC is committed to assuring a clean environment and healthy economy for citizens of Coastal Georgia. GEC's goal is to ensure a safe and healthy place to live and raise families. In service of that goal, in addition to their other programs, GEC administers EPA Technical Assistance Grants (TAGs") for Superfund Sites in their community. The TAGs provide money for activities that help the community participate in decision making at eligible Superfund sites. Such grants enable qualified community groups to contract with independent technical advisors to interpret and help the community understand the technical information about a particular site.

6. The GEC has invested considerable organizational resources in advocating for the affected neighborhoods in its community and, through the TAG program, provide independent technical advice to evaluate proposals by the regulatory agencies and potentially responsible parties; educate the local community about the nature of the

contamination at the Superfund sites in the community and health, environmental and economic risks posed by the contamination; and work with the community regarding alternative ways to deal with the contamination. In addition to acting in this educational capacity, GEC through the TAG program works with the EPA and other stakeholders to find a satisfactory solution to problems proposed by these sites.

7. GEC is the requester of the withheld records. The information and government records requested by GEC under FOIA are necessary for the GEC technical advisor to perform his job and thus for the community to understand and participate in important decisions concerning their future. GEC is harmed by EPA's failure to comply with FOIA, because that failure harms GEC's ability to provide full, accurate, and current information to the public on a matter of great public interest and urgency. 5 U.S.C. § 552(a)(6)(c). Absent this critical information, GEC cannot advance its mission of educating the public to ensure that the public continues to have a vital voice in government decisions.

8. GEC will analyze the information it receives that is responsive to its request, and will share it with the public through educational presentations, memoranda, reports, or press releases. GEC will also use the information it receives to provide technical assistance to the community, submission of comments and requests for public hearings, and collaboration with local, state and national organizations to address the environmental quality of life affected by the superfund sites in the community. In addition, GEC will use the information it receives to educate the public through its website, www.glynnenvironmental.org. Currently, GEC's website keeps the community advised of the status and concerns regarding the four Superfund sites in the community.

9. Defendant EPA is an agency within the meaning of 5 U.S.C. § 552(f), and as such is subject to FOIA pursuant to 5 U.S.C. § 552(f). Defendant is the federal agency with possession and control of the requested records and is responsible for fulfilling GEC's FOIA request.

IV. STATUTORY FRAMEWORK OF THE FREEDOM OF INFORMATION ACT RELEVANT TO ALL CLAIMS

10. FOIA, requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request that reasonably describes the nature of the records sought, and which conforms with agency regulations and procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).

11. FOIA requires federal agencies to make a final determination on all FOIA requests it receives within twenty (20) days (excluding weekends and holidays) after the receipt of such request, unless the agency provides notice to the requester of "unusual circumstances" meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(i).

12. FOIA also requires federal agencies to make a final determination on all FOIA appeals it receives within twenty (20) days (excluding weekends and holidays) after receipt of such appeal, unless the agency provides notice to the appealing party of "unusual circumstances" meriting additional time for responding to the FOIA appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

13. FOIA expressly provides that a person shall be deemed to have exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(i)- 5 U.S.C. § 552(a)(6)(A)(ii). 5 U.S.C. §

552(a)(6)(C).

14. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

15. FOIA provides a mechanism for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the Court makes a written finding that “the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously,” a disciplinary investigation is triggered. 5 U.S.C. § 552(a)(4)(F).

16. Under FOIA, a federal agency has the burden to sustain its actions. 5 U.S.C. § 552(a)(4)(B).

17. Pursuant to FOIA, this court may assess attorney’s fees and litigation costs against the United States if Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

V. STATEMENT OF FACTS RELEVANT TO PLAINTIFF’S FOIA CLAIMS

18. On or about March 20, 2008, Plaintiff sent a FOIA request to EPA seeking all memos, notes letter, email communications, reports, documents, test results and attachments and all other forms of records referencing, produced by, or received by the EPA since January 2006 concerning the following in Glynn County, Georgia:

- LCP Chemicals Superfund Site
- Brunswick Wood Preserving Superfund Site;
- Terry Creek Dredge Spoil Areas/Hercules Outfall Site;
- Toxaphene analytical methods, quantification, or identification;

- The meeting on or around February 19, 2008, with Shen-Yi Yang, EPA OSW, including but not limited to meeting planning, list of attendees, materials presented, and follow-up to the meeting.
- The Glynn Environmental Coalition
- Altama Elementary School
- The January 29, 2008, EPA presentation to the Glynn County Board of Education, including but not limited to meeting planning, presentation preparation and follow-up to the meeting.

See Electronic Submission Form of March 20, 2008 and Letter of March 21, 2008 from Daniel Parshley to Freedom of Information Officer, Environmental Protection Agency Region IV,. (Attached as Exhibit A).

19. On or about March 20, 2008 EPA responded to Plaintiff's FOIA Request (No. 4-RIN-00363-08) providing Plaintiffs with a letter acknowledging receipt of the request and providing a response date of April 17, 2008. (Attached as Exhibit B).

20. On or about April 14, 2008, Plaintiff requested a fee waiver regarding its FOIA Request (No. 4-RIN-00363-08).

21. On or about April 14, 2008 EPA Region IV advised Plaintiff that a portion of FOIA Request (No. 4-RIN-00363-08) had been transferred to the FOIA Office at EPA Headquarters (EPA HQ) and that Plaintiff should expect a separate reply from EPA HQ regarding items 4 and 5 of Plaintiff's Request.

22. On or about April 15, 2008 EPA HQ acknowledged receipt of the March 20, 2008 request, forwarded to EPA HQ on or about April 15, 2008 FOIA Request (No. HQ-RIN-01170-08).

23. On or about April 18, 2008 Plaintiff agreed to an extension of time to May 9, 2008, in order for EPA to complete FOIA Request (No. 4-RIN-00363-08).

24. On or about May 2, 2008, EPA approved GEC's requested waiver of fees associated with processing its request, pursuant to 5 U.S.C.A. § 552(a)(4)(A)(iii).

25. On or about May 7, 2008 EPA HQ informed Plaintiff that an extension of time to May, 27, 2008, was required to fulfill its FOIA Request (No. HQ-RIN-01170-08).

26. On or about May 19, 2008 EPA Region IV contacted Plaintiff regarding completion of FOIA Request (No. 4-RIN-00363-08).

27. On or about May 28, 2008 EPA HQ responded to Plaintiff's FOIA Request (No. HQ-RIN-01170-08) providing Plaintiff with certain responsive records.

28. On or about May 30, 2008 EPA Region IV responded to Plaintiff's FOIA Request (No. 4-RIN-00363-08) providing Plaintiff with certain responsive records and informing Plaintiff that it had deemed a portion of the responsive records inappropriate for discretionary release and that EPA was unable to provide documents or portions of documents determined to be exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). In addition, EPA identified the documents being withheld to include 400 emails regarding inter-agency conversations among staff, relating to LCP Chemicals Superfund Site, Brunswick Wood Preserving Superfund Site, Hercules 009 and Terry Creek. Additionally withheld, but not identified as such, was the August 2007 Monthly Progress Report for the Terry Creek Site. Furthermore, EPA Region IV advised Plaintiff that a portion of FOIA Request (No. 4-RIN-00363-08) had been transferred to the FOIA Office at EPA Headquarters (EPA HQ) and that Plaintiff should expect a separate reply from EPA HQ regarding certain portions of Plaintiff's Request including: (1) the toxaphene analytical methods; and (2) information relating to the meeting on or about February 19, 2008, with the EPA, Office of Solid Waste.

29. On or about June 18, 2008, Plaintiff timely appealed EPA's determination and partial denial of FOIA Request (No. 4-RIN-00363-08) to the National Freedom of

Information Officer, U.S. EPA, Records, FOIA and Privacy Branch pursuant to 5. U.S.C. § 552(a)(6), 36 C.F.R. §200.22 and 7 CFR § 1.8(a) See Letter from Daniel Parshley to National Freedom of Information Officer, U.S. EPA Records, FOIA and Privacy Branch, June 18, 2008. (Attached as Exhibit C).

30. On or about June 26, 2008, the EPA Office of General Counsel notified Plaintiff that its FOIA Appeal 04-RIN-00363-08-A (HQ-APP-00092-08) had been received on June 23, 2008. See letter from Barbara Bruce to Daniel Parshley, June 26, 2008. (Attached as Exhibit D).

31. Despite several calls inquiring about the status of Plaintiff's appeal or timeframe of any response, and with the exception of the aforementioned letters of May 30 and June 26, 2008, Plaintiff has received no further response from EPA to Plaintiff's March 21, 2008 FOIA request, or its appeal of June 18, 2008.

32. Plaintiff has exhausted its administrative remedies with respect to the processing of Plaintiff's FOIA request. See, e.g., *Oglesby v. U.S. Dept. of Army*, 920 F.2d 57, 65, 112 A.L.R. Fed. 815 (D.C. Cir. 1990).

33. Plaintiff has a statutory right to the records it seeks, and there is no legal basis for Defendant's refusal to disclose them.

VI. PLAINTIFF'S CLAIMS FOR RELIEF

CLAIM ONE—VIOLATION OF FOIA—FAILURE TO PROVIDE ALL NON-EXEMPT RECORDS RESPONSIVE TO PLAINTIFF'S MARCH 21, 2008 FOIA REQUEST TO EPA.

34. Plaintiff realleges and incorporates by reference all preceding paragraphs.

35. Defendant EPA has violated FOIA by failing to provide Plaintiff with all

responsive non-exempt records, and all non-exempt portions thereof, requested by Plaintiff in its FOIA request of March 21, 2008 to EPA.

36. By failing to provide Plaintiff with all records responsive to Plaintiff's FOIA request of March 21, 2008 to EPA, Defendant has denied Plaintiff's right to this information provided by law under FOIA.

37. Unless enjoined by the Court, Defendant will continue to violate Plaintiff's legal rights to access all of the records that Plaintiff has requested in Plaintiff's March 21, 2008 FOIA request to EPA.

38. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to seeking judicial review of EPA's failure to provide all responsive records and documents to Plaintiff's March 21, 2008 FOIA request to EPA.

39. Plaintiff has been required to expend costs and to obtain counsel to prosecute this action.

40. Plaintiff is entitled to reasonable costs of litigation, including attorneys' fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for Plaintiff and provide the following relief:

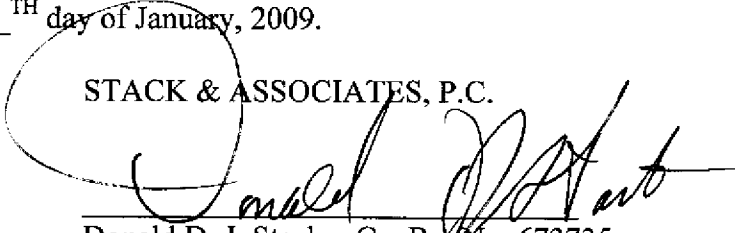
- (A) Declare that EPA has violated FOIA by failing to provide all non-exempt records, and all non-exempt portions thereof, responsive to Plaintiff's FOIA request of March 21, 2008 to EPA;
- (B) Order Defendant EPA to immediately provide Plaintiff with all remaining non-

exempt documents and records responsive to Plaintiff's March 21, 2008 FOIA request to EPA;

- (C) Award Plaintiff reasonable attorneys' fees and litigation costs in this action, pursuant to 5 U.S.C.A. § 552(a)(4)(E); and
- (D) Grant such other and further relief as the Court may deem just and proper.


Respectfully submitted this 16TH day of January, 2009.

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